



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB1146

Introduced 2/11/2009, by Rep. Harry R. Ramey, Jr.

#### SYNOPSIS AS INTRODUCED:

820 ILCS 55/12  
820 ILCS 55/15

from Ch. 48, par. 2865

Amends the Right to Privacy in the Workplace Act. Provides that until such time as any Employment Verification System is able to automatically verify the work authorization status of 99% of employees, the Illinois Department of Labor shall post on its website a link to a federal government website that provides an employer information about the federal e-verify program (rather than discouraging employers from participating in such program and prohibiting the State of Illinois from participating in the program, unless otherwise required by federal law). Eliminates the preemption provisions. Provides that the court shall award an employee or applicant for employment prevailing in an action under the Act for a willful and knowing violation of the Act, \$500 per affected employee plus costs, reasonable attorney's fees, and actual damages. Provides that the provisions of the Act are severable. Effective immediately.

LRB096 08020 RLC 18125 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Right to Privacy in the Workplace Act is  
5 amended by changing Sections 12 and 15 as follows:

6 (820 ILCS 55/12)

7 Sec. 12. Use ~~Restrictions on use~~ of Employment Eligibility  
8 Verification Systems.

9 (a) Until such time as any Employment Eligibility  
10 Verification System, including the E-Verify program and the  
11 Basic Pilot program, as authorized by 8 U.S.C. 1324a, Notes,  
12 Pilot Programs for Employment Eligibility Confirmation  
13 (enacted by P.L. 104-208, div. C, title IV, subtitle A), is  
14 able to automatically verify the work authorization status of  
15 99% of employees, the Illinois Department of Labor shall post  
16 on its website a link to a federal government website that  
17 provides an employer information about the federal e-verify  
18 program.

19 ~~Employers are prohibited from enrolling in any Employment~~  
20 ~~Eligibility Verification System, including the Basic Pilot~~  
21 ~~program, as authorized by 8 U.S.C. 1324a, Notes, Pilot Programs~~  
22 ~~for Employment Eligibility Confirmation (enacted by PL~~  
23 ~~104-208, div. C, title IV, subtitle A), until the Social~~

1 ~~Security Administration (SSA) and Department of Homeland~~  
2 ~~Security (DHS) databases are able to make a determination on~~  
3 ~~99% of the tentative nonconfirmation notices issued to~~  
4 ~~employers within 3 days, unless otherwise required by federal~~  
5 ~~law.~~

6 (b) Upon initial enrollment in an Employment Eligibility  
7 Verification System or within 30 days after the effective date  
8 of this amendatory Act of the 96th General Assembly, an  
9 employer enrolled in an Employment Eligibility Verification  
10 System must attest, ~~Subject to subsection (a) of this Section,~~  
11 ~~an employer who enrolls in the Basic Pilot program is~~  
12 ~~prohibited from the Employment Eligibility Verification~~  
13 ~~Systems, to confirm the employment authorization of new hires~~  
14 ~~unless the employer attests,~~ under penalty of perjury, on a  
15 form prescribed by the Department of Labor:

16 (1) that the employer has received the Basic Pilot or  
17 E-Verify training materials from the Department of  
18 Homeland Security (DHS) ~~DHS~~, and that all employees  
19 ~~personnel~~ who will administer the program have completed  
20 the Basic Pilot or E-Verify Computer Based Tutorial (CBT);  
21 and

22 (2) that the employer has posted the notice from DHS  
23 indicating that the employer is enrolled in the Basic Pilot  
24 or E-Verify program and, the anti-discrimination notice  
25 issued by the Office of Special Counsel for  
26 Immigration-Related Unfair Employment Practices (OSC),

1 Civil Rights Division, U.S. Department of Justice in a  
2 prominent place that is clearly visible to prospective  
3 employees, ~~and the anti-discrimination notice issued by~~  
4 ~~the Illinois Department of Human Rights (IDHR).~~

5 The employer must maintain the signed original of the  
6 attestation form prescribed by the Department, as well as  
7 copies of all CBT certificates of completion, and make them  
8 available for inspection or copying by the Department at any  
9 reasonable time.

10 (c) It is a violation of this Act for an employer enrolled  
11 in an Employment Eligibility Verification System:  
12 ~~Responsibilities of employer using Employment Eligibility~~  
13 ~~Verification Systems.~~

14 (1) to fail to ~~The employer shall~~ display the notices  
15 supplied by DHS and, ~~OSC, and IDHR~~ in a prominent place  
16 that is clearly visible to prospective employees; ~~:-~~

17 (2) to allow an employee to use an Employment  
18 Eligibility Verification System prior to having completed  
19 the CBT; ~~The employer shall require that all employer~~  
20 ~~representatives performing employment verification queries~~  
21 ~~complete the CBT. The employer shall attest, under penalty~~  
22 ~~of perjury, on a form prescribed by the Department of~~  
23 ~~Labor, that the employer representatives completed the~~  
24 ~~CBT.~~

25 (3) to fail to ~~The employer shall become familiar with~~  
26 ~~and comply with the Basic Pilot Manual.~~

1           ~~(4) The employer shall notify all prospective~~  
2           ~~employees at the time of application that such employment~~  
3           ~~verification system may be used for immigration~~  
4           ~~enforcement purposes.~~

5           ~~(5) The employer shall provide all employees who~~  
6           ~~receive a tentative nonconfirmation with a referral letter~~  
7           ~~and contact information for what agency the employee must~~  
8           ~~contact to resolve the discrepancy.~~

9           ~~(6) The employer shall comply with the Illinois Human~~  
10           ~~Rights Act and any applicable federal anti discrimination~~  
11           ~~laws.~~

12           ~~(7) The employer shall use the information it receives~~  
13           ~~from SSA or DHS only to confirm the employment eligibility~~  
14           ~~of newly hired employees after completion of the Form I-9.~~  
15           ~~The employer shall safeguard the ~~this~~ information~~  
16           ~~contained in the Employment Eligibility Verification~~  
17           ~~System, and the means of access to the System ~~it~~ (such as~~  
18           ~~passwords and other privacy protections). An employer~~  
19           ~~shall, ~~to~~ ensure that the System ~~it~~ is not used for any~~  
20           ~~other purpose other than employment verification of~~  
21           ~~newly-hired employees and shall ensure ~~as necessary to~~~~  
22           ~~protect its confidentiality, including ensuring that the~~  
23           ~~information contained in the System and the means of access~~  
24           ~~to the System are ~~it is~~ not disseminated to any person~~  
25           ~~other than employees ~~of the employer~~ who need such~~  
26           ~~information and access ~~it~~ to perform the employer's~~

1       employment verification responsibilities. All claims that  
2       an employer refused to hire, segregated, or acted with  
3       respect to recruitment, hiring, promotion, renewal of  
4       employment, selection for training or apprenticeship,  
5       discharge, discipline, tenure or terms, privileges, or  
6       conditions of employment without following the procedures  
7       under the Basic Pilot or E-Verify program shall be brought  
8       under paragraph (G) (2) of Section 2-102 of the Illinois  
9       Human Rights Act.

10       (d) (Blank). ~~Preemption. No unit of local government,~~  
11 ~~including a home rule unit, may require any employer to use an~~  
12 ~~Employment Eligibility Verification System, including under~~  
13 ~~the following circumstances:~~

- 14               ~~(1) as a condition of receiving a government contract;~~  
15               ~~(2) as a condition of receiving a business license; or~~  
16               ~~(3) as penalty for violating licensing or other similar~~  
17 ~~laws.~~

18       ~~This subsection (d) is a denial and limitation of home rule~~  
19 ~~powers and functions under subsection (h) of Section 6 of~~  
20 ~~Article VII of the Illinois Constitution.~~

21       (Source: P.A. 95-138, eff. 1-1-08.)

22       (820 ILCS 55/15) (from Ch. 48, par. 2865)

23       Sec. 15. Administration and enforcement.

24       (a) The Director of Labor or his authorized representative  
25 shall administer and enforce the provisions of this Act. The

1 Director of Labor may issue rules and regulations necessary to  
2 administer and enforce the provisions of this Act.

3 (b) If an employee or applicant for employment alleges that  
4 he or she has been denied his or her rights under this Act, he  
5 or she may file a complaint with the Department of Labor. The  
6 Department shall investigate the complaint and shall have  
7 authority to request the issuance of a search warrant or  
8 subpoena to inspect the files of the employer or prospective  
9 employer, if necessary. The Department shall attempt to resolve  
10 the complaint by conference, conciliation, or persuasion. If  
11 the complaint is not so resolved and the Department finds the  
12 employer or prospective employer has violated the Act, the  
13 Department may commence an action in the circuit court to  
14 enforce the provisions of this Act including an action to  
15 compel compliance. The circuit court for the county in which  
16 the complainant resides or in which the complainant is employed  
17 shall have jurisdiction in such actions.

18 (c) If an employer or prospective employer violates this  
19 Act, an employee or applicant for employment may commence an  
20 action in the circuit court to enforce the provisions of this  
21 Act, including actions to compel compliance, where efforts to  
22 resolve the employee's or applicant for employment's complaint  
23 concerning the violation by conference, conciliation or  
24 persuasion under subsection (b) have failed and the Department  
25 has not commenced an action in circuit court to redress the  
26 violation. The circuit court for the county in which the

1 complainant resides or in which the complainant is employed  
2 shall have jurisdiction in such actions.

3 (d) Failure to comply with an order of the court may be  
4 punished as contempt. In addition, the court shall award an  
5 employee or applicant for employment prevailing in an action  
6 under this Act the following damages:

7 (1) Actual damages plus costs.

8 (2) For a willful and knowing violation of this Act,  
9 \$200 plus costs, reasonable attorney's fees, and actual  
10 damages.

11 (3) For a willful and knowing violation of subsection  
12 (c) of Section 12 of this Act, \$500 per affected employee  
13 plus costs, reasonable attorney's fees, and actual  
14 damages.

15 (e) Any employer or prospective employer or his agent who  
16 violates the provisions of this Act is guilty of a petty  
17 offense.

18 (f) Any employer or prospective employer, or the officer or  
19 agent of any employer or prospective employer, who discharges  
20 or in any other manner discriminates against any employee or  
21 applicant for employment because that employee or applicant for  
22 employment has made a complaint to his employer, or to the  
23 Director or his authorized representative, or because that  
24 employee or applicant for employment has caused to be  
25 instituted or is about to cause to be instituted any proceeding  
26 under or related to this Act, or because that employee or

1 applicant for employment has testified or is about to testify  
2 in an investigation or proceeding under this Act, is guilty of  
3 a petty offense.

4 (Source: P.A. 87-807.)

5 Section 97. Severability. The provisions of this Act are  
6 severable under Section 1.31 of the Statute on Statutes.

7 Section 99. Effective date. This Act takes effect upon  
8 becoming law.